

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16956 of 2004

with

SPECIAL CIVIL APPLICATION No 16958 of 2004

To

SPECIAL CIVIL APPLICATION NO. 16983 of 2004

with

SPECIAL CIVIL APPLICATION NO. 16365 OF 2004

To

SPECIAL CIVIL APPLICATION NO. 16400 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

ANANDKUMAR VYASJIBHAI RAVAL

Versus

GUJARAT WATER RESOURCES DEVELOPMENT CORPN.LTD.

Appearance:

1. Special Civil Application No. 16956 and 16958 2004 to
Special Civil Application Nos. 16983 of 2004
MR.HIREN M MODI for the Petitioners.
MR DG CHAUHAN for the Respondents.
2. Special Civil Application nos. 16365 of 2004 to

Special Civil Application No. 16400 of 2004.

Mr. D.G.Chauhan for the petitioners

Mr. Hiren M Modi for the respondents.

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 03/05/2005

ORAL JUDGEMENT

All the petitions arise out of the awards dated 30th April, 2004, 7th May, 2004 and 1st June, 2004 in total 36 References passed by the Labour Court, Palanpur. Since common questions of facts and law are involved, they are being disposed of by this common judgment.

2. A notice dated 29.12.2004 in Special Civil Application No. 16956 of 2004 with Special Civil Application No. 16958 to Special Civil Application No. 16983 of 2004, was issued for final disposal of matters with Special Civil Application No. 16365 of 2004. All these petitions are taken up for final hearing. The learned counsel for the management has also challenged the award passed by the Labour Court, mainly for the reason that by the award passed by the Labour Court, it has travelled beyond terms of reference. The workmen were daily rated workmen. Initially, a notice under section 25-F of the Industrial Disputes Act, 1947 was issued on 2nd July, 1993. Subsequently, all the notices were withdrawn by a notice dated 23rd December, 1993. Withdrawal letters were sent individually. Thus, there was no termination of services by Gujarat Water Resources Development Corporation. Initially, notices were given to 71 workmen, out of whom, 20 workmen reported for work, 10 workmen filed Special Civil Applications. (Upon submission of the management that there is no termination of services, 10 petitions were disposed of and all the 10 workmen were reinstated in service), four workmen accepted retrenchment, one workman approached City Civil Court, Ahmedabad (upon representation by the management that there is no termination of service, the suit was disposed of and the workmen resumed duties) and 36 workmen left out, who have not resumed their duties eventhough retrenchment notices were withdrawn. They raised industrial dispute, a Reference was made under section 10 of the Industrial Disputes Act as if they were terminated and ultimately, Labour Court, Palanpur awarded pay scale, allowances, gratuity, retrenchment compensation and notice pay etc. treating continuity of

service. It is submitted by the learned counsel for the management Gujarat Water Resources Development Corporation Ltd. that there is no cessation of service and hence, there was no question of awarding any retrenchment compensation or notice pay nor there was any demand of gratuity and therefore, award of gratuity could not have been passed by the Labour Court. For gratuity, there is a separate Act and there is a machinery inbuilt even providing appellate authority thereunder and therefore, the award passed by the Labour Court, Palanpur is erroneous and bad in law. The daily rated workmen whose services were never terminated have been given pay scale and allowances with continuity of service. In fact, this tantamount to regularisation of services. This could not have been awarded by the Labour Court, Palanpur, especially when the workmen have not completed 240 days in preceding year of 1993. It is also submitted by the learned counsel for the management that time and again the workmen were offered work but they have not availed of that opportunity. Out of 71 workmen, immediately 20 workmen resumed duties, 10 workmen filed Special Civil Applications. Their petitions were also disposed of by this Court and no relief was granted as there was no termination of the workman at all. Thereafter, they resumed their duties. One workman who had filed a suit in City Civil Court, Ahmedabad which has also been disposed of as there was no cessation of work and he also resumed his duty. Thus, out of 71 workmen, barring 36 workmen, all had resumed the work and the work was offered. It is further submitted by the learned counsel for the management that when the work was offered to all these 36 workmen, they never resumed duties and eventhough there was no cessation of service, the industrial dispute was raised, as if there is termination of service and the Labour Court has awarded pay scale, gratuity, retrenchment compensation as if they are continued in service. Therefore, the award passed by the Labour Court, Palanpur deserves to be quashed and set aside. It is also submitted by the learned counsel for the management that the Labour Court has travelled beyond the scope of reference. The pay scales and allowances have been awarded. In fact, the whole reasoning given in the award is in favour of the management. Originally, the Reference was for reinstatement with back wages, but it is pointed out to the Labour Court that there is no termination of service, and hence the Reference ought to have been rejected. However, instead of rejecting the Reference, what was not demanded, has been awarded by the Labour Court. These pay scale, allowances, etc. could be given only when they are regular employees. But in fact, they were daily wagers. For regularisation, no

industrial dispute has been raised. It was never the industrial dispute of the workmen that they must get pay scale and allowances. It was never the industrial dispute raised by the workmen that they are entitled for gratuity. Though there is a separate machinery provided under Payment of Gratuity Act, 1972, instead of allowing the workmen to take recourse under the said Act, without any demand and dispute raised by the workmen, gratuity has been awarded by the Labour Court. Though there is no termination and though there is a withdrawal of notice under section 25F of the Act, retrenchment compensation has been awarded. Thus, there are errors both of facts and law in the said awards passed by the Labour Court, Palanpur and hence, the awards passed by the Labour Court, Palanpur deserve to be quashed and set aside.

3. I have also heard the learned counsel for the workmen who has mainly submitted that without holding any inquiry and without following the procedure under the Act of 1947, services of the workmen have been brought to an end. The workmen have worked for more than 240 days. Several workmen are working since years with Gujarat Water Resources Development Corporation and therefore, the action of the management of termination of their services was in fact, violative of the provisions of the Act of 1947. Hence, the awards passed by the Labour Court, Palanpur are absolutely in consonance with facts and law. The workmen are entitled for pay scale and allowances which the Corporation is paying to other similarly situated workmen. In fact, to other similarly situated workmen, a definite pay scale is being paid, definite allowances are being paid. The present workmen are also entitled for similar pay scale and similar allowances from the management. This aspect of the matter has been properly appreciated by the Labour Court, Palanpur and, therefore, this Court should not entertain the petitions preferred by the Corporation. On the contrary, the Labour Court ought to have passed an order for reinstatement with full back wages and in not passing the order of reinstatement with full back wages, the Labour Court has committed a grave error. Without holding an inquiry and without giving any notice under section 25-F of the Act the services of the workmen have been brought to an end and therefore, reinstatement ought to have been awarded by the Labour Court and as there was no fault on the part of the workmen, nor was there any misconduct on the part of the workmen, and as their services were brought to an end, full back wages with continuity of service ought to have been awarded and hence, the award passed by the Labour Court to the extent to which reinstatement and full back wages are not

awarded, deserves to be quashed and set aside.

4. Having heard the learned counsel for both the parties at length and keeping in mind the evidence on record, the awards passed by the Labour Court, Palanapur deserve to be quashed and set aside, especially for the following facts and reasons :

- (i) Initially, a notice under section 25-F dated 2nd July, 1993 was given to 71 workmen, but subsequently they were withdrawn vide notice dated 23rd December, 1993. Thus, out of 71 workmen, 20 workmen reported to the management and resumed duties. They were daily rated workmen. Out of remaining workmen, 10 filed Special Civil Application before this Court and upon arguments it was submitted that there was no cessation of services and all the 10 workmen resumed the work. Out of the remaining workmen, one had filed a suit before City Civil Court, Ahmedabad. The same was also disposed of upon submission of the management that there is a withdrawal of the notice under section 25-F of the Act of 1947. Therefore, the said workmen can resume work and in fact, the said workmen had also resumed duties. Out of the remaining left out workmen, four accepted the fact that they do not want to resume the duty and therefore, what is left out is a group of 36 workmen who approached the Labour Court, instead of resuming duties, raised an industrial dispute that there is a termination of services and there must be reinstatement with full back wages.
- (ii) From the evidence on record, it is clear that notice under section 25-F was withdrawn and out of 71 workmen, only 36 had not resumed duties, otherwise rest of the workmen have resumed duties and four voluntarily did not join duties and have not even raised any dispute till today. The present lot of 36 workmen could have resumed duties, in absence of any cessation of service or in absence of any termination of service. In fact, there is enough invitation to the workmen to resume duties. Several out of 71 workmen have resumed duties.
- (iii) From EXh. 10/1 (Annexure "A") to the memo of Special Civil Application No. 16365 of 2004, it is evident that in the year 1989, the work done is for 192 days; in the year 1990, for 219 days; in the year 1991, nil are the days and in the year 1992, work done is for 115 days and in the

year 1993, for 102 days the workmen have worked. In fact, there is no termination of services, but as per allegations of the workmen, who are 36 in number that there was a termination of service in the year 1993, then in the previous year, 240 days working is not completed. This aspect of the matter has not been rightly appreciated in the award passed by the Labour Court. Therefore, reinstatement was not rightly granted by the Labour Court.

(iv) It is also rightly appreciated by the Labour Court, Palanpur that there are recruitment rules for the appointment with Gujarat Water Resources Development Corporation Ltd. The present recruitees-workmen were never appointed under the Rules. Despite several requests made by the management, the workmen had not resumed duties. Therefore, correctly, it is appreciated by the Labour Court that reinstatement cannot be granted in the facts and circumstances of the case. When there is no termination, as per management, there is no question of reinstatement whatsoever arises.

(v) The learned counsel for the petitioner Corporation submitted that at present there is a surplusage of daily rated workmen. In fact, no drilling work in Banaskantha is going on. 1000 similarly situated workmen have already been retrenched in the recent past and there is a further direction from the State of Gujarat to retrench all surplusage daily rated workmen. There are 700 such daily rated workmen. Therefore, reinstatement may not be granted by this Court.

(vi) It is an admitted position on record that there is no termination of service by the management. Once, there is no termination of service, the retrenchment could not have been awarded by the Labour Court. The industrial dispute was never raised for regularisation and hence, pay scale and allowances ought not to have been granted by the Labour Court. This tantamount to either travelling beyond the scope of Reference or tantamounts to so much widening the scope of Reference, that it amounts to total departure from the terms of Reference. Neither of this is permissible. What is awarded, is pay scale, allowances or incidental benefits. Gratuity is also awarded by the Labour Court. In fact, there is no such prayer. The Labour Court could have permitted workmen to take recourse under The

Payment of Gratuity Act, 1972. Therefore, awarding gratuity also tantamount to travelling beyond the scope of Reference. In fact, there is no termination of services by the management. This was the stand right from the conciliation proceedings, and even before this Court. Therefore, retrenchment compensation and the notice pay could not have been awarded by the Labour Court. Therefore, this vitiates the whole award and it tantamount to miscarriage of justice. It violates the provisions of law.

(vii) The learned counsel for the workmen submitted that the workmen will be satisfied if they are reinstated in service. In reply to the aforesaid argument, it is submitted by the learned counsel for the department that there is a cessation or termination of service. On the contrary, the workmen could have resumed their duties in the year 1993 itself. In view of these facts, there was no question of reinstatement whatsoever arises. The services of workmen have not been brought to an end by the management even as per submission before this Court. The whole Reference was for reinstatement with back wages. Instead of deciding the same, pay scales, allowances, gratuity, retrenchment compensation and notice pay have been awarded. Out of 71, several workmen have resumed their duty. The lot of 36 workmen, instead of resuming their duty have raised an industrial dispute. Opportunities were afforded for resuming work, but the same has not been availed.

5. For the aforesaid reasons, I see no reasons to interfere with the awards passed by the Labour Court, Palanpur, so far as reinstatement and back wages are concerned. But so far as awarding of pay, allowances, retrenchment compensation and notice pay etc. is concerned, the same could not have been awarded by the Labour Court, Palanpur. Therefore, the awards dated 30th April, 2004 in Reference (IC) No. 511 of 1996; dated 1st June, 2004 in Reference (IC) No.521 of 1996 and dated 7th May, 2005 in Reference (IC) Nos.523 of 1996 passed by the Labour Court, Palanpur are hereby quashed and set aside. Special Civil Application nos. 16956 of 2004 and 16958 of 2004 to 16983 of 2004 are hereby dismissed. Rule is discharged in each of the above petitions with no order as to costs. Rule made absolute to the aforesaid extent in Special Civil Application nos. 16365 of 2004 to 16400 of 2004 with no order as to costs.

(D.N.Patel, J)

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